

**REMARKS**

Claims 1, 2, 6, 8-12, and 16-33 are currently pending. Claims 1 and 2 are amended to more distinctly claim what Applicant regards as the present invention and are supported by the specification and claims as originally filed. No subject matter has been relinquished by such amendments. No new matter is added by way of these amendments. Claim 22 is cancelled without prejudice. Applicant reserves the right to pursue these claims, prior versions of the claims, and/or the cancelled claims in another application.

Applicant appreciates the Examiner's withdrawal of previous rejections under 35 U.S.C. § 103(a).

In the Office Action, the Examiner rejected claims 1, 2, 6 and 16-33 under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,376,451 to Teasdale et al. ("Teasdale") in view of U.S. Patent No. 6,008,261 to Genova ("Genova"). The Examiner rejected Claims 1-2, 6, 8-12, 16-20, 22-29 and 32-33 under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 5,525,255 to Leadingham et al. ("Leadingham") in view of Genova. The Examiner also rejects claims 1, 2, 6, and 16-33 as allegedly obvious over Teasdale in view of U.S. Patent No. 3,609,089 to Cantrell et al. ("Cantrell") but this appears to be a typographical error. Further, the Examiner does not cite to any specific portion of Cantrell elsewhere in the Office Action. Applicant respectfully traverses these rejections, and for the reasons detailed below, these rejections should be withdrawn and the claims, as amended, should be allowed to issue.

**Applicant's Reply**

In this Response, Applicant amends claims 1 and 2, cancels claim 22, and addresses the Examiner's rejections. Support for the amendments to the claims can be found throughout the application. Amendments to the claims are being made solely to expedite

prosecution and do not constitute an acquiescence to any of the Examiner's rejections. Applicant's silence with regard to the Examiner's rejections of the dependent claims constitutes a recognition by the Applicant that the rejections are moot based on Applicant's Amendment and Remarks relative to the independent claim from which the dependent claims depend.

### **Rejections under 35 U.S.C. §103(a)**

In the Office Action, claims 1, 2, 6 and 16-33 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Teasdale in view of Genova. The Examiner also rejects claims 1, 2, 6, and 16-33 as allegedly obvious over Teasdale in view of Cantrell, but this appears to be a typographical error. Claims 1-2, 6, 8-12, 16-20, 22-29 and 32-33 are rejected under 35 U.S.C. § 103(a) as being obvious over ("Leadingham") in view of Genova.

To reject claims in an application under Section 103, an examiner must establish a *prima facie* case of obviousness. Using the Supreme Court's guidelines enunciated in *Graham v. John Deere*, 383 U.S. 1, 17 (1966), one determines "obviousness" as follows:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

In *KSR Int'l Co. v. Teleflex Inc.*, the Supreme Court reaffirmed the *Graham* test, and indicated that although it should not be rigidity applied, a useful test for determining obviousness is to consider whether there is a teaching, suggestion or motivation in the prior art that would lead one of ordinary skill in the art to combine known elements of the prior art to arrive at the claimed invention. *KSR*, 550 U.S. \_\_\_, 82 USPQ2d 1385, 1396 (2007)). Importantly, the Court emphasized that a patent Examiner's analysis under Section 103 must be

made explicit and there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *Id.*

Independent claim 1, as amended, is directed to a composition suitable for use as a wash water additive in wash water in a vehicle wash. The wash water additive composition recited in claim 1 consists of: from 1 to 10 weight % of a micro-organism for degrading a substance selected from the group consisting of oil, fat and organic material; from 0.1 to 2 weight % of a preservative; from 1 to 40 weight % of a part selected from the group consisting of a surfactant, a detergent, and the combination thereof; from 1 to 3 weight % of an alkali metal halide; the balance being water. Independent claim 2, as amended, is directed to a composition suitable for use as a detergent composition in a vehicle wash. The detergent composition recited in claim 2 consists of: from 1 to 10 weight % of a micro-organism for degrading a substance selected from the group consisting of oil, fat and organic material; from 0.1 to 2 weight % of a preservative; from 1 to 40 weight % of a part selected from the group consisting of a detergent or a detergent and a surfactant; from 1 to 3 weight % of an alkali metal halide; the balance being water. Teasdale and Leadingham considered alone or in combination with Genova or Cantrell, do not disclose or suggest the compositions as featured in the present claims.

#### No Motivation to Combine

As an initial matter, Teasdale is directed to a cleaning composition containing anionic and nonionic surfactants, an enzyme mixture for breaking down organic compounds, an activator for rendering the enzyme more active, a nonpathogenic bacteria, and water. (*See* Teasdale, Abstract). Leadingham describes a cleaning agent composition containing a surfactant and a wetting agent alkane sulfonate. (*See* Leadingham, Abstract). In contrast, Genova

describes a high viscosity composition comprising, among other things, an alkyl ester of lactic acid and optionally, an electrolyte. (See Genova, Abstract). Cantrell describes a process for cleaning road film from road vehicles with a cleaning composition. The cleaning composition contains, among other things, alkali metal chloride. (See Cantrell, Abstract). The cited references are concerned with solving different problems, and there would be no reason or likelihood of success for one of ordinary skill to combine the teachings of Teasdale or Leadingham with the teachings of Genova or Cantrell. The Examiner has not established a prima facie case of obviousness for at least these reasons.

Teasdale in view of Genova/Cantrell

Assuming, *arguendo*, that there was a reasonable likelihood of success and a motivation to combine Teasdale and Cantrell, the combination still would fail to disclose or suggest all elements of amended claims 1 and 2.

As noted above, the compositions featured in claims 1 and 2 consist of: from 1 to 10 weight % of a micro-organism for degrading a substance selected from the group consisting of oil, fat and organic material; from 0.1 to 2 weight % of a preservative; from 1 to 40 weight % of a part selected from the group consisting of a surfactant, a detergent, and the combination thereof; from 1 to 3 weight % of an alkali metal halide; the balance being water

In the Office Action response of January 2, 2008, Applicant noted that the composition described in Teasdale requires both an enzyme mixture and a buffer, which are not components of the compositions featured in claims 1 and 2. Specifically, Teasdale describes, “[i]n general terms, the composition of the present invention includes at least one surfactant; an *enzyme mixture* ... nonpathogenic bacteria for degrading and assimilating organic compounds...

and water. More specifically, the invention provides an aqueous hard surface, liquid cleaning composition containing an anionic and a nonionic surfactant; an enzyme mixture ... an enzyme activator ... bacteria; a stabilizer ...*a buffer*... and water” (Teasdale, col. 1, line 38-col. 2, line 3, emphasis added). In the present Office Action, the Examiner acknowledges that Teasdale teaches a composition that requires these elements but claims that the present application has a transitional phrase of “comprising” which permits the inclusion of additional components outside the scope of the claimed invention. Applicant respectfully disagrees as the claims in the Amendment filed on January 2, 2008 featured compositions that *consist essentially* of the claimed features. As noted above, Applicant has amended claims 1 and 2 in the present response to further clarify the claimed subject matter, and the claims, as amended, *consist* of the listed elements. As such, Teasdale does not does disclose or suggest the features of independent claims 1 and 2.

The Examiner also acknowledges that Teasdale does not disclose or suggest an alkali metal halide component as featured in independent claims 1 and 2 but alleges that this feature is disclosed in Genova. Teasdale, however, actually teaches *away from* adding alkali metal halides such as NaCl to the described composition. Again, Teasdale requires the use of enzymes as part of the described cleaning composition. The enzyme is a crucial component of the described composition, as it used to catalyze hydrolysis of various molecules, and it is important for the enzymes to remain in “good condition.” (See Teasdale, column 2). It is well known that alkali metal halides such as the NaCl described in Genova can have a significant effect on the behavior of enzymes. As such, adding the NaCl described in Genova goes *against* the teachings of Teasdale wherein the concentration and behavior of the described enzyme is critical, and one of ordinary skill in the art would not combine the two references.

Additionally, assuming, *arguendo*, that Teasdale does not teach away from adding the NaCl described in Genova to the composition described in Teasdale, Genova fails to overcome the deficiencies discussed above with respect to the enzyme mixture and buffer described in Teasdale. Further, as noted above, Examiner lists claims 1 and 2 as allegedly obvious over Teasdale in view of Cantrell. While this appears to be a typographical error and the Examiner does not cite to any specific teachings of Cantrell, Cantrell also fails to overcome the deficiencies discussed above with respect to the enzyme mixture and buffer described in Teasdale. Further, Cantrell while describes the use of alkali metal halides. As discussed above, Teasdale actually teaches away from the use of these compounds. As such, one of ordinary skill in the art would not combine the teachings of Teasdale with those of Cantrell.

Thus, claims 1 and 2 are allowable over Teasdale, Cantrell, and Genova, either alone or in combination, for at least these reasons. Claims 6, 16-21 and 23-33 depend from claims 1 and 2 and are thus allowable for at least the same reasons.

#### Leadingham in view of Genova

Leadingham describes a cleaning agent containing a surfactant, nonylphenol ethoxylate, and a wetting agent alkane sulfonate, for removing oils and grease from the surfaces of objects. (See Leadingham, claim 1). As acknowledged by the Examiner, Leadingham does not disclose or suggest the inclusion of an alkali metal halide or preservative at all, let alone in the weight percentages featured in claims 1 and 2, but the Examiner alleges that these features of claims 1 and 2 are disclosed in Genova.

Genova does describe the optional use of an electrolyte, e.g., NaCl, but assuming, *arguendo*, that there was a reasonable likelihood of success and a motivation to combine

Leadingham and Genova, in order to achieve adequate viscosity in the concentrations of alkali halide featured in the present claims, Genova also requires the use of esters of lactic acid as thickening agents. (*See* Genova, col. 2, lines 30-33). Esters of lactic acid are not part of the claimed invention, and as such, combining Teasdale with the teachings of Genova does not disclose or suggest the features of independent claims 1 and 2.

Further, like Teasdale, Leadingham also teaches *away from* the addition of electrolytes such as the NaCl described in Genova. Specifically, Leadingham is directed to a cleaning agent that avoids using compounds which can irritate the skin or membranes. Specifically, Leadingham describes, “...the use of an organic solvent based cleaning agent could result in the cleaning agent coming into contact with the skin of a person using the washer, and the fumes could be inhaled by the user. Therefore, it would be highly desirable to have a new and improved non-toxic, non-volatile, safe cleaning agent for use in parts washers and other related applications, where the cleaning agent was highly effective in the cleaning of the parts.” (Leadingham, col. 1, lines 49-52). In contrast, Genova acknowledges that the described electrolyte, NaCl, can make surfactants even more irritating and caustic to users. Specifically, Genova describes, “[t]he quantity of electrolyte, however, which is necessary for adequately viscosizing the aqueous surfactant compositions can be rather high, *further increasing the already marked irritating power on the skin and mucous membranes* of compositions of anionic surfactants.” (Genova, col. 1, lines 40-44). As such, Leadingham also teaches away from the use of NaCl as described in Genova, and one of ordinary skill in the art would not combine the references as suggested by the Examiner.

Thus, claims 1 and 2 are allowable over Leadingham and Genova, either alone or in combination, for at least these reasons. Claims 6, 8-12, 16-20, 23-29, and 32-33 depend from claims 1 and 2 and are thus allowable for at least the same reasons.

Based on the foregoing Amendment and Remarks, Applicants traverse Examiner's rejection of claims 1, 2, 6, 8-12, 16-21 and 23-33 under 35 U.S.C. § 103.



**CONCLUSION**

Applicant submits that this Amendment and the accompanying Remarks do not raise new issues for consideration or necessitate the undertaking of any additional search of the art by the Examiner. This Amendment should therefore allow for immediate action by the Examiner. On the basis of the foregoing Amendments and remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests the previous rejections be withdrawn, and that the pending claims be allowed by the Examiner. Favorable consideration and timely allowance of this application are respectfully requested.

Respectfully submitted,

  
\_\_\_\_\_  
David Schalk  
Patent Office Reg. No. 60,527

Jeremy Merling  
Patent Office Reg. No. 60,219

Paul A. Ragusa  
Patent Office Reg. No. 38,587

BAKER BOTTS L.L.P.  
30 Rockefeller Plaza  
New York, New York 10112-4498

Attorneys for Applicant  
(212) 408-2500